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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1931

## No. 693

JOHN VANCE TAYLOR, PETITIONER,

*vs.*

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 11, 1932

CERTIORARI GRANTED MARCH 28, 1932

(36,507)

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## IN UNITED STATES DISTRICT COURT, DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

vs.

JOHN VANCE TAYLOR, Otherwise Known as JOHN V. TAYLOR

INDICTMENT—Filed December 23, 1930

The Grand Inquest of the United States of America, in and for the District of Maryland, inquiring for the body of said District, do on their oath present that John Vance Taylor otherwise known as John V. Taylor, late of said [fol. 2] District heretofore, to wit, on the 20th day of November, in the year of our Lord nineteen hundred and thirty, at Curtis Bay, Baltimore, in the State of Maryland and District aforesaid, did unlawfully have in his possession certain intoxicating liquor to wit, 122 cases of whiskey (732 gallons) a more particular description of said intoxicating liquor being to the Grand Inquest aforesaid unknown, the possession of said intoxicating liquor as aforesaid being then and there prohibited and unlawful; contrary to the form of the Statute in such case made and provided, and against the peace, government, and dignity of the United States.

Act October 28, 1919, Title 2, Sections 3 and 29.

And the Grand Inquest aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the 14th day of December, in the year of our Lord nineteen hundred and twenty-three, a Criminal Information was filed in the District Court of the United States for the District of Maryland, at Baltimore, charging the said John V. Taylor with the unlawful and prohibited manufacture and possession of intoxicating liquor and possession of property designed for the manufacture of liquor in violation of the Act of October 28, 1919, known as the National Prohibition Act, which said manufacture and possession of intoxicating

liquor and possession of property as aforesaid was then and there prohibited, and unlawful.

That on the 5th day of March, in the year of our Lord nineteen hundred and twenty-four, in said Court, the said John V. Taylor upon a plea of not guilty and subsequent conviction by a jury duly empanneled and sworn, was by the Court sentenced to 5 months in jail, all of which will more fully and at large appear by reference to the Record of Criminal Proceedings, Number 5467, instituted at the December Term, 1923, of said Court, all of which was and is unlawful and prohibited, and contrary to the form of the Statute in such case made and provided, and against the peace, government and dignity of the United States.

Act October 28, 1919, Title 2, Sections 3 & 25.

[fol. 3] And the Grand Inquest aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the 27th day of June, in the year of our Lord nineteen hundred and twenty-eight, a Criminal Information was filed in the District Court of the United States for the District of Maryland, at Baltimore, charging the said John Vance Taylor with the unlawful and prohibited possession and transportation of intoxicating liquor in violation of the Act of October 28, 1919, known as the National Prohibition Act, which said possession and transportation of intoxicating liquor as aforesaid was then and there prohibited and unlawful.

That on the 29th day of June, in the year of our Lord nineteen hundred and twenty-eight, in said Court, the said John Vance Taylor entered a plea of guilty and was sentenced to pay a fine of $200.00 and costs, all of which will more fully and at large appear by reference to the Record of Criminal Proceedings, Number 11696, instituted at the June Term, 1928, of said Court, all of which was and is unlawful and prohibited and contrary to the form of the Statute in such case made and provided, and against the peace, government, and dignity of the United States.

Act October 28, 1919, Title 2, Section 3.

James M. Hoffa, Assistant U. S. Attorney.

The foregoing Indictment endorsed as follows:

"A True Bill.

J. Barry Mahool, Foreman."

[fol. 4] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

vs.

JOHN VANCE TAYLOR

MOTION TO SUPPRESS EVIDENCE AND QUASH INDICTMENT AND ORDER OF COURT OVERRULING SAME—Filed February 19, 1931

To the Honorable the judge of said court:

The Petition of John Vance Taylor, Defendant in the above entitled case, respectfully represents:

1. That your petitioner is a resident of 5100 Curtis Avenue, Baltimore, Maryland, where your petitioner resides with his family.

2. That on or about November 20th, 1930, about 3 o'clock A. M., Prohibition Agents, Ernest Ford, Robert Ford, John Barton and H. Brink proceeded to the residence of said Defendant and searched said resident premises and garage which adjoins the premises, without any violation taking place in their presence.

3. That the said Agents did not have a search warrant necessary to search said property, but proceeded to search and did search without any probable cause and then and there seized a quantity of intoxicating liquor.

4. That the search and seizure without a lawful warrant was improper.

[fol. 5] 5. That by virtue of the evidence as obtained aforesaid, an indictment was issued by the United States Grand Jury, at the instance of the United States District Attorney's Office of this Honorable Court, charging your Petitioner with possession, which indictment is now pending against him in this Honorable Court.

6. That your Petitioner anticipates that the intoxicating liquors seized by said Agents will be used as evidence against him at the trial of the above entitled case.

7. That your Petitioner alleged that the intoxicating liquors seized as aforesaid was in violation of your Petitioner's rights under the 4th and 5th Amendments of the Constitution of the United States and contrary to the provisions of Section 25, Title II of the National Prohibition Act, an Act of Congress approved October 20th, 1919, and in direct violation of Section 6, etc., of the Act Supplemental to the National Prohibition Act, an Act of Congress approved November 23rd, 1921, in that the said search, seizure and arrest were not in accordance with the process of law.

Wherefore your Petitioner moves that the evidence obtained as aforesaid be excluded at the trial of the above entitled case in this Honorable Court and that the said evidence be suppressed and that this Honorable Court order the indictment quashed.

Samuel S. Levin, Attorney for Defendant. John Vance Taylor, Defendant.

*Duly sworn to by John V. Taylor. Jurat omitted in printing.*

[fol. 6] Order of Court

Motion to Suppress Evidence and to quash the indictment "Overruled".

William C. Coleman, United States District Judge.

11-19-31.

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In United States District Court

Plea

And thereupon, the said John Vance Taylor, came to the bar of the Court here in his proper person, and having hearing of said Indictment, and forthwith being demanded of him concerning the premises in the said Indictment above specified and charged upon him how he will acquit himself thereof, the said John Vance Taylor, does say that he is Not Guilty thereof, and thereof for good and evil he does put himself upon the country, and the said James M. Hoffa,

Esq., Assistant United States Attorney for the District aforesaid, who in this behalf prosecuteth doth the like.

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[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREEMENT OF PARTIES WAIVING TRIAL BY JURY—Filed February 19, 1931

It is hereby stipulated and agreed between counsel for the United States, the traverser and counsel for the traverser that this case be tried by the Court only, without a jury and that a jury trial be and the same is hereby expressly waived.

James M. Hoffa, Asst. United States Attorney. John Vance Taylor, Traverser. Samuel S. Levin, R. Palmer Ingram, Attorneys for Traverser.

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IN UNITED STATES DISTRICT COURT

VERDICT

And, thereupon, the Court sitting as a Jury, doth say that the said John Vance Taylor is guilty of the premises aforesaid and laid to his charge in the manner and form as by the said Indictment is charged upon him.

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IN UNITED STATES DISTRICT COURT

JUDGMENT

Therefore, it is considered by the Court here that the said John Vance Taylor be imprisoned for three months in Jail and pay a fine of Seven Hundred and Fifty Dollars and costs.

Memorandum

Verdict was rendered in this case on the 12th day of February, 1931, and Judgment was rendered on the same day.

[fol. 8] Memorandum.

The said John Vance Taylor was thereupon, to wit, on the 19th day of February, 1931, admitted to bail in the sum of $2000 to abide the judgment of the United States Circuit Court of Appeals for the Fourth Circuit and of this Court.

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In United States District Court for the District of Maryland

No. 14374, Criminal Docket

United States of America

vs.

John Vance Taylor

Order Extending Time for Filing Bill of Exceptions to 18th April, 1931—Filed March 19, 1931

For good cause shown, it is this 19th day of March, 1931, ordered, that the time for the filing of the Bill of Exceptions, in the above entitled case, be and the same is hereby extended for a period of thirty days from date hereof.

William C. Coleman, United States District Judge.

At Baltimore, Maryland, this 19th day of March, 1931.

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[fol. 9] In United States District Court for the District of Maryland

No. 14374, Criminal Docket

United States of America

vs.

John Vance Taylor

Order Extending Time for Filing Bill of Exceptions to 17th May, 1931—Filed April 17, 1931

For good cause shown, it is this 17th day of April, 1931, ordered, that the time for the filing of the Bill of Excep-

tions, in the above entitled case, be and the same is hereby extended for a period of thirty days from date hereof.

William C. Coleman, United States District Judge.

At Baltimore, Maryland, this 17th day of April, 1931.

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IN UNITED STATES DISTRICT COURT

**Bill of Exceptions**—Filed May 18, 1931

(Style of court and title omitted)

CAPTION

A condensed and narrative form of the evidence offered by the Government in the above styled case, save as a proper understanding of the questions presented may require that it be set forth otherwise.

Be it remembered:

ERNEST J. FORD testified as follows: He was no longer a federal Prohibition agent, but had been an agent for about four years. In the course of his duties as a federal officer [fol. 10] he went to the premises, 5100 Curtis Avenue, Curtis Bay, Baltimore, Maryland, on November 20, 1930, as the result of a number of complaints, regarding "a place on Curtis Avenue that was being used to store whisky." Ford, in company with other agents, had been "on the road during the night of the 19th and after midnight we decided on our way back to Baltimore to investigate the garage at Curtis Bay at 5100 Curtis Avenue." The witness went to the front double door of the garage, where, he said there was a strong odor of whisky. The garage was on a small nine foot alley which ran between it and a police station. The agents looked for a door on the alley side of the garage and found a small door but it had been closed. The witness was not sure, but believed the garage was constructed of metal. It was only large enough for one automobile. It was not possible to drive a car into the garage from the alley. The doors were on the side facing Curtis Avenue. There was a yard on the other side of the garage, and the witness thought there was a vacant lot in the rear of it.

The agents first arrived at the premises around 2:30 o'clock in the morning. Besides the witness, there were Agents Ford, Barton, Brink and several other agents. The witness stated there had been complaints about this place for about a year. A motion by the defendant to strike out this statement was overruled. These complaints had not been followed up because the agents thought the place was too close to the police station to permit of any truth in the complaints, which caused the agents to be skeptical thereof. About two days previous to the raid, they had a complaint about it. The witness and Agent Barton were the first to approach the garage. They walked up to the front of it. The odor of whisky was around it and there was a crack of about an inch and a half or two inches under the bottom of the door. Agent Barton held a flash light to the crack of the door while the witness looked through a small crack between the two doors and could see cases piled up in the garage. These cases were ordinary mason jar cases and the witness added, "what you usually put whisky in." Over the objection of the defendant, the witness was allowed to testify that they were the kind of cases that they usually use around a still to put whisky in, according to his experience as an agent. The cases were made of cardboard [fol. 11] and each held a dozen half-gallon jars. After discovering that the garage had a large number of cases in it and no automobile, they decided "to in some way enter the garage." They found that the front doors of the garage were fastened from the inside and then they made a further investigation to find out how the people who had fastened the door on the inside left the garage, and they discovered a small door that "led out of the garage to the home of Mr. Taylor, into the yard of the home where he lives." There was a board fence there and the only way to reach that door was to climb over the fence. They entered the garage from the yard through this door. In the garage they found 122 cases of whisky. The witness was the first one to enter the garage. He had been inside the garage about two minutes when two other agents came into the garage bringing Mr. Taylor, whom they had arrested. Taylor was turned over to the witness who questioned him. At first Taylor said the garage did not belong to him and later admitted that it did belong to him. He said he didn't know anything about the whisky, that the garage was his,

but the whisky was not his. Later he admitted that the whisky was his. The witness said that he knew that Taylor had been convicted for another liquor violation. Concerning the complaints about the place, the witness said he could not remember whether names were mentioned in all of them, but that in the last complaint they got he remembered well that Mr. Taylor's name was mentioned. After Taylor's arrest, he was searched and a key found in his pocket which fit the lock of the garage door. When the witness first detected the odor he was "right in front of the double doors that faced on Curtis Avenue." He said he knew the odor of whisky from his four years experience as a prohibition agent.

Cross-examination:

*Pm* cross-examination the witness said he later went into the house with the defendant. He went through the kitchen and dining room and in the front part of the premises was a saloon which defendant said had not been used since Prohibition. Witness didn't remember that Taylor offered to take him through it, but he did say it had not been used for a number of years. Asked whether he was satisfied with the defendant's statement, that the [fol. 12] saloon part of the premises had not been used since Prohibition, the witness answered he didn't have any business searching the place. The agents had no search warrant for the garage. The witness had at no time gone to the United States Commissioner for a search warrant to search the garage, in spite of the fact that they had had complaints about it over a period of about a year. None of these facts were ever taken before the Commissioner or application for a search warrant made to him. The case was dismissed by the United States Commissioner when it came up for hearing. The front of the garage faced Curtis Avenue, one side was on the alley and the other sides were inside a fence which enclosed the premises. The witness did not know whether or not the United States Industrial Alcohol plant was within a block of the premises. He knew there was such a plant in Curtis Bay.

Q. You could not, of course, tell what was in those cases, could you?

A. Well, I could not say what was in them.

Q. Of course not. And you did not know what was in them, did you?

A. Well, I might say that I didn't know and I might say that I did.

Q. You suspicioned, but you did not know, did you?

A. I had a strong suspicion.

Q. But you did not know what was in them because you never had seen inside them, had you?

A. That is right.

The witness jumped over the fence into the yard in order to enter the garage, because he didn't want to break down the double doors in front. After jumping over the fence and entering the yard, he entered by breaking the hasp off the door leading from the yard into the garage. Asked whether they broke the hasp off, witness answered that they didn't break it off, they pulled it off. He had not seen Taylor before he went into the garage.

### Motion to Strike

At the conclusion of the testimony of this witness, a motion to strike out all of his evidence was made by the defendant. The Court overruled the motion and an exception was noted.

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[fol. 13] John M. Barton testified as follows: He was a federal prohibition agent and had been in the service since 1922. After arriving at the premises he looked under the double doors of this garage and saw a portion of the cases inside. Ford was the first man who got in, and after the agents were there for possibly ten minutes or so, Taylor appeared on the sidewalk. He looked as though he had just been aroused from sleep. It was not quite clear to the witness whether he first saw the cases from under the door or whether the doors were "kind of pulled apart."

"I am speaking of the first time I saw the cases," the witness said. "I am not just clear as to whether it was under the door or through the crack in the two doors that would be left by forcing them apart."

Q. Was there any odor around the premises?

A. Well, as to the odor of whisky, I cannot say that I detected it.

Someone of the agents had a flashlight that was used in order to see into the garage.

From his experience as a prohibition agent, witness stated that the cases seen by him in the garage were the same kind as used by the larger liquor operators.

Cross-examination:

On cross-examination the witness admitted that the front doors were forced apart but that the agents failed to gain entrance through that way.

There was a dog in the yard that made a commotion. The first time he saw Taylor was when he appeared on the street near the garage after the entry had been made. There was an alcohol plant in Curtis Bay but he had never been to the plant himself. He had been an agent for about nine years. He repeated that, "I won't commit myself about the odor of whisky about the garage."

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[fol. 14] HOBART D. BRINK testified as follows: He had served as a Prohibition agent and investigator since 1924 with exception of about six months. He was now in charge of enforcement work in Baltimore. He accompanied the other agents to 5100 Curtis Avenue on November 20th. When they arrived at the garage, Agents Ford and Barton were the first to approach it in making this investigation. One of them had a flash light. Shortly after they approached the garage he got out of the automobile, walked up to the garage, lay down on the sidewalk and looked through the crack under the doors. He could see the cases inside. These cases were cartons containing two-quart Mason Jars which they had found were used in most instances to transport and store whisky. The cartons were made of corrugated card board. There were a number of these cases which you could see under the door and by looking in through the crack between the doors. There was a hasp on the door that you could take hold of and pull out to make a crack between the doors which you could look through at the top, and when the light was thrown under the doors you could see the cases inside. There was an odor of corn whisky about the place. It was a sort of sour smell. After they got into the garage they found that some

of these cartons had evidently been used before as they were broken and soaked with liquor. The witness first got the odor when he was lying on the ground looking through the crack under the door. The agents were around the place for some time before Ford climbed over the fence and went inside. The witness first observed the odor of whisky while lying down on the sidewalk in front of the garage looking through a crack under the door, before Mr. Ford had gone over the fence.

"By the Court:

"Q. When did you first get the odor?

"A. When I was lying—I think I noticed it first when I was examining the door through the crack, lying on the ground looking under the crack in the door.

"By Mr. Hoffa:

"Q. Up to that time had there been any attempt made to enter the garage?

"A. No sir. We were around there for some time until [fol. 15] Mr. Ford went over the fence, went in the side—I was not present when he went in, I went in later, went through after the back door was opened.

"Q. Now, Mr. Brink, you say you got down on the ground, and you attempted to open the doors; you tried to open them from the outside, is that right?

"A. No, sir, I never did attempt to open the doors.

"Q. Was someone trying to open them while you were down on the ground?

"A. No, sir, there was some one looking through there to see inside the garage. The only attempt that was made to get in the garage, the first attempt made to get in it, to my knowledge, and I was there all the time, was when Agent Ernie Ford went over the fence."

Cross-examination:

On cross-examination the witness admitted that there had been complaints about these premises, that he was the agent in charge, but that he had never been to the United States Commissioner to attempt to obtain a search warrant for these premises. He turned the information over to Agent Ford, but had not directed him to go to the United

States Commissioner to get a warrant. He never made any effort himself to see that a warrant was obtained for these premises. The premises was enclosed by a fence and the two sides of the garage which extended to the street and alley. The fence ran back quite some distance to the garage and connected with it. Taylor had to go into the house after his coat and Agent Ford went in with him. Taylor was evidently living there. The witness did not see in the cartons, but said he was convinced what was in them.

He did not know how long the whisky had been there or whether it was there before prohibition, but was convinced from the odor that whisky had been there for a long time. There was an unmistakable odor of corn whisky about the premises. He did not see anybody in the yard or around the house before Ford entered the garage. The first he saw of Taylor was when Robert Ford was talking to him on the sidewalk. He did not see him come from the house. Agent Ford had gone over the fence before he saw Taylor. The agent said he had no information that the saloon was [fol. 16] in use. It was not searched. He was not familiar with that section and did not know that there was a plant of the United States Industrial Alcohol Company in the vicinity. The witness never made any application for a warrant to search the premises.

Testimony of witness concluded.

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By agreement it was admitted that the chemist's report showed that samples submitted in the case was corn liquor, water white, containing alcohol by volume 41.05 per cent.

The Government admitted that the premises is a private dwelling occupied as such by the defendant.

Court records of two prior convictions were admitted by agreement.

The Government's case was then closed.

MOTION RENEWED

A Motion was made by the defendant to exclude all the evidence on the ground that the search was without a search warrant and that it was the search of a private

dwelling in violation of Section 6 of the Willis-Campbell Acts.

The Motion was overruled by the Court and an exception was noted.

The defendant offered no evidence.

OPINION OF THE COURT

The COURT (COLEMAN, J.), orally:

The Court has reached the conclusion that this motion must be overruled, for the following reasons: Of course, in a number of these cases the line of distinction is narrow and each case has to be treated on its own particular facts. It is equally true that the constitutional protection that sur- [fol. 17] rounds the private home must be very carefully safeguarded, but that rule must be applied in a common sense way. It is also true in this case that we are not concerned with what the evidence proves beyond a reasonable doubt, but merely with what the weight of the evidence discloses.

The case is not, at this stage, the trial of a defendant as to his guilt or innocence of a given charge, but is merely a hearing on a motion to determine whether or not certain evidence can or can not be used against him. On the evidence taken as a whole the Court is forced to the conclusion that the agents were able to, and did definitely detect the odor of whiskey before they entered the premises or laid hands on any part of the premises. It is true there is the testimony of one of the three agents that he can not say whether or not he detected the odor of whisky, but there is no evidence by any one absolutely negativing the odor of whisky from the sidewalks. Therefore, on that point the Court feels constrained to conclude that the weight of the evidence, the weight of the credible evidence has not been contradicted. The weight of the credible evidence leads necessarily to the conclusion that from the outside, without having entered the premises, these agents did detect the odor.

Then comes the second point—may one with such sense of smell enter premises of this kind? It is unnecessary to dilate on the general principles announced a number of

times by this Court that a search warrant even for private dwellings, is not indispensible. It is indispensible unless the officer enters the premises in the course of the detection of some crime, and for the purpose of attempting to arrest the person engaged in the commission of such crime. The officer must have reasonable ground to believe that the crime is there being committed; he does not need to see the person in the commission of it; he does not need to hear the person in the commission of it, but he must either see, or hear, or smell something which gives him reasonable basis for believing that a crime is being committed on the premises. What is reasonable is a question of fact in each given case.

Here we may assume that this garage should be treated [fol. 18] as a part of the private dwelling, although it is not entirely clear from the facts that it actually was, but assuming that it was, and accepting the evidence as I must, that the odor was very definite from the outside, the agents then proceeded, following their sense of smell, to determine what was there. Now, a strong smell of whisky coming from a garage certainly reasonably indicates to an officer that whisky is being stored there. And it is not an unreasonable deduction from that first conclusion that that whisky is improperly there—certainly it is very much more reasonable to assume that it could not, than that it could be there legally. There is also evidence that before the premises were entered the agents actually saw evidence of a large number of cases stored in this small garage. The court has no hesitancy in saying that the whole weight of the evidence shows that these officers had reasonable grounds for believing that storage of whisky was taking place on these premises, and unless the whisky was possessed under very peculiar circumstances, which it would not be reasonable to assume existed as to these premises, the possession would be unlawful and the officers were, in the opinion of the Court, justified in following their sense of smell and entering the premises.

It may have been more orderly to have proceeded to obtain a search warrant. The officers may have been able to get at one time or another, and perhaps on previous occasions, evidence which would have supported the issuance of a search warrant, but the Court fails to find that, in spite of that fact, the agents under the circumstances exceeded

their authority. They acted, as the Court views the evidence, not merely upon suspicion, but upon one of their senses, in the face of conditions which no reasonable man could assume represented legitimate storage of whisky. The place, the time, the quantity, all the elements must have indicated to a reasonable man that something unlawful was going on.

Some suggestion has been made that the crime to be detected must be a felony, or that the person must be there who is going to be arrested. The Court does not so construe the requirements of the law generally. Possession of liquor is a crime under the National Prohibition Act, as [fol. 19] well as transportation, manufacture and sale. That being true, I see no reason for distinguishing, under circumstances such as those in the present case, between the right of an agent to enter such premises, and his right to enter if some other criminal act unrelated to liquor were being done on the premises.

The motion is overruled.

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ORDER SETTLING BILL OF EXCEPTIONS

To which action and ruling of the Court in so refusing the said defendant's request as aforesaid, the defendant then and there excepted, and prays the Court to sign and seal this his Bill of Exceptions, which is accordingly done this 18th day of May, 1931.

William C. Coleman, United States District Judge for the District of Maryland. (Seal.)

5/18/31.

This Bill of Exceptions is agreed upon.

Simon E. Sobeloff, U. S. Attorney. James M. Hoffa, Assistant U. S. Attorney.

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IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS— Filed February 19, 1931

(Style of court and title omitted)

Now comes the Appellant, John Vance Taylor, and assigns Errors in the rulings and the judgment of the Court in the above styled cause:

(1) The Court erred in permitting the Government to introduce any evidence relating to the search and seizure.

[fol. 20] (2) The Court erred in permitting the Government to introduce the testimony of Agent Ernest J. Ford relating to the search and seizure.

(3) The Court erred in permitting the Government to introduce the testimony of Agent John M. Barton relating to the search and seizure.

(4) The Court erred in permitting the Government to introduce the testimony of Agent H. D. Brink relating to the search and seizure.

(5) The Court erred in overruling the defendant's Motion to suppress the evidence relating to the search and seizure.

(6) The Court erred in sentencing the defendant as if for a conviction of a third offense of possession of intoxicating liquors, whereas in fact the Court should have sentenced the defendant as a second offender as to unlawful possession of intoxicating liquors, and this fact was called to the attention of the Court before the imposition of said sentence herein complained of.

(7) The Court erred in refusing the defendant's motion to exclude all of the testimony and direct a verdict for the defendant.

Samuel S. Levin, R. Palmer Ingram, Attorneys for Petitioner.

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IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

versus

BENJAMIN FRANKLIN CLATTERBUCK, ROBERT A. CLATTERBUCK, JOHN V. TAYLOR, JOHN ARTHUR CARTER, and EDDIE BROWN

CRIMINAL INFORMATION IN CASE No. 5467—Filed December 14, 1923

[fol. 21] A. W. W. Woodcock, Attorney for the United States of America, in and for the District of Maryland, who for the said United States in this behalf prosecutes,

in his own proper person, comes into Court this 14th day of December, 1923, and gives the Court here to understand and be informed that Benjamin Franklin Clatterbuck, Robert A. Clatterbuck, John V. Taylor, John Arthur Carter and Eddie Brown, each late of said District, heretofore, to wit, on the seventeenth day of November, in the year of our Lord, nineteen hundred and twenty-three at Prince Georges County, in the State of Maryland and District aforesaid, did unlawfully manufacture certain intoxicating liquor, to wit, 296 gallons of whiskey, and 12,800 gallons of mash, a more particular description of said intoxicating liquor is to the United States Attorney aforesaid unknown, the manufacture of said intoxicating liquor as aforesaid being then and there prohibited and unlawful; contrary to the form of the Statute in such case made and provided, and against the peace, government and dignity of the United States.

Act October 28, 1919, title 2, section 3.

Second Count

And the said Attorney further gives the Court here to understand and be informed that Benjamin Franklin Clatterbuck, Robert A. Clatterbuck, John V. Taylor, John Arthur Carter and Eddie Brown, each late of said District, heretofore, to wit on the seventeenth day of November, in the year of our Lord, nineteen hundred and twenty-three, at Prince Georges County in the State of Maryland and District aforesaid, did unlawfully have in their possession certain intoxicating liquor, to wit, 296 gallons of whiskey and 12,800 gallons of mash a more particular description of said intoxicating liquor is to the United States Attorney aforesaid unknown, the possession of said intoxicating liquor as aforesaid being then and there prohibited and unlawful; contrary to the form of the Statute in such case made and provided, and against the peace, government and dignity of the United States.

Act October 28, 1919, title 2, section 3.

[fol. 22] Third Count

And the said Attorney further gives the Court here to understand and be informed that Benjamin Franklin Clatterbuck, Robert A. Clatterbuck, John V. Taylor, John

Arthur Carter and Eddie Brown, each late of said District, heretofore, to wit, on the seventeenth day of November, in the year of our Lord, nineteen hundred and twenty-three, at Prince Georges County, in the State of Maryland and District aforesaid, did unlawfully have in their possession certain property designed for the manufacture of liquor intended for use in violating the provisions of Title 2 of the Act of October 28, 1919, to wit; One 1000 gallon still, one 500 gallon still, and one 1500 pound steam pressure boiler, a more particular description of which said property designed for the manufacture of liquor intended for use in violating the provisions of Title 2 of the Act of October 28, 1919, is to the United States Attorney aforesaid unknown; the possession of which said property designed for the manufacture of liquor intended for use in violating the provisions of Title 2 of the Act of October 28, 1919, as aforesaid, being then and there prohibited and unlawful; contrary to the form of the Statute in such case made and provided, and against the peace, government and dignity of the United States.

Act October 28, 1919, title 2, section 25.

Wherefore the said Attorney in behalf of the United States prays the consideration of the Court here in the premises and that due process of law may be awarded against the above named defendants in this behalf to make answer to the United States touching and concerning the premises aforesaid.

A. W. W. Woodcock, United States Attorney.

[fol. 23] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

No. 5467, Criminal

UNITED STATES OF AMERICA

vs.

BENJAMIN FRANKLIN CLATTERBUCK, ROBERT A. CLATTERBUCK, JOHN V. TAYLOR, JOHN ARTHUR CARTER, and EDDIE BROWN

DOCKET ENTRIES IN CASE NO. 5467, CRIMINAL

1923.

Dec. 14. Criminal Information for Vio. Act Oct. 28, 1919, title 2, Secs. 3 and 25 filed. (Unlawful manufacture and possession of intoxicating liquor and possession of property designed for the unlawful manufacture of intoxicating liquor).

" " Traversers Carter and Brown arraigned and plead "Guilty".

" " Judgment: That the traversers John Arthur Carter and Eddie Brown each be imprisoned for sixty days in the Baltimore City Jail.

" " Commitments issued.

1924.

Jan. 12. Petition of John V. Taylor, Assent of U. S. Attorney and Order of Court authorizing P. A. Chamberlain, Group Head of the General Proh. Agents to deliver to petitioner or Mrs. Anna Taylor, his agent, one Buick Touring Car, engine #607051 upon payment of all costs filed.

" " Appearance of Harry W. Nice for traverser John V. Taylor Order filed.

[fol. 24]

Jan. 26. Petition of John Vance Taylor and Order of Court, that Bernard J. Lee, Warden of the Balto. City Jail bring or cause to be brought to this Court Edward Brown, and John Carter on January 28, 1924, at 10 o'clock, A. M. filed.

1924.

Jan. 28. Traversers Benjamin F. Clatterbuck, Robert A. Clatterbuck and John V. Taylor arraigned and each plead "Not Guilty".

" " Jury empanelled and sworn as to Benjamin Franklin Clatterbuck, Robert A. Clatterbuck and John V. Taylor.

" " Bailiff sworn.

" " Jury out with leave to seal their verdict.

" 29. Verdict (sealed) "Not Guilty" as to Benjamin Franklin Clatterbuck and Robert A. Clatterbuck and disagreement as to traverser John V. Taylor.

" " Judgment: Acquittal as to traversers Benjamin Franklin Clatterbuck and Robert A. Clatterbuck.

Feb. 5. Traverser John V. Taylor, c/o J. Abner Saylor recognized in sum of $1,500 with Mollie Saulsbury and Benjamin Saulsbury, her husband (2432 W. Balto. St.) in same amount for his appearance from day to day as required and until discharged in due course of law.

Mch. 5. Jury empanelled and sworn as to John V. Taylor.

" 6. Bailiff sworn.

" " Verdict "Guilty".

" " Judgment: That the traverser John V. Taylor be imprisoned for five months in the Baltimore City Jail.

" " Commitment issued.

Apr. 15. Order of Court directing destruction of all liquor and property seized in this case filed.

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[fol. 25] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

versus

JAMES BORROUGHS and JOHN VANCE TAYLOR

CRIMINAL INFORMATION IN CASE No. 11696—Filed June 27, 1928

A. W. W. Woodcock, Attorney for the United States of America, in and for the District of Maryland, who for the

said United States in this behalf prosecutes, in his own proper person, comes into Court this 27th day of June, 1928, and gives the Court here to understand and be informed that James Borroughs and John Vance Taylor, each late of said District, heretofore, to wit, on the 2nd day of May, in the year of our Lord nineteen hundred and twenty-eight, at Anne Arundel County, in the State of Maryland and District aforesaid, did unlawfully have in their possession certain intoxicating liquor, to wit, 180 gallons corn whiskey, a more particular description of said intoxicating liquor is to the United States Attorney aforesaid unknown, the possession of said intoxicating liquor as aforesaid being then and there prohibited and unlawful; contrary to the form of the Statute in such case made and provided, and against the peace, government, and dignity of the United States.

Act October 28, 1919, Title 2, Section 3.

Second Count

And the said Attorney further gives the Court here to understand and be informed that James Borroughs and John Vance Taylor, each late of said District, heretofore, to wit on the 2nd day of May, in the year of our Lord [fol. 26] nineteen hundred and twenty-eight, at Anne Arundel County in the State of Maryland and District aforesaid, did unlawfully transport certain intoxicating liquor, to wit, 180 gallons corn whiskey a more particular description of said intoxicating liquor is to the United States Attorney aforesaid unknown, the transportation of said intoxicating liquor as aforesaid being then and there prohibited and unlawful; contrary to the form of the Statute in such case made and provided and against the peace, Government, and dignity of the United States.

Act October 28, 1919, title 2, section 3.

Wherefore the said Attorney in behalf of the United —— prays the consideration of the Court here in the premises and that due process of law may be awarded against the above-named defendant in this behalf to make answer to the United States touching and concerning the premises aforesaid.

A. W. W. Woodcock, United States Attorney.

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

No. 11696, Criminal

UNITED STATES OF AMERICA

vs.

JAMES BURROUGHS and JOHN VANCE TAYLOR

DOCKET ENTRIES IN CASE NO. 11696, CRIMINAL

1928.

June 27. Criminal Information for Vio. Act Oct. 28, 1919, title 2 Sec. 3 filed. (National Proh. Act.)

[fol. 27]

June 29. Appearance of Samuel S. Levin for traversers Order filed.

" " Traversers arraigned and each plead "Guilty".

" " Judgment: That the traversers each pay a fine of Two Hundred Dollars and costs.

" " Fines and costs paid.

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IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

No. 14374, Criminal

UNITED STATES OF AMERICA

vs.

JOHN VANCE TAYLOR

STIPULATION OF COUNSEL AS TO MAKING UP RECORD ON APPEAL—Filed May 18, 1931

It is hereby stipulated and agreed by and between counsel for the respective parties, that Rule 23 of the Circuit Court of Appeals for the Fourth Circuit shall apply and govern the making up and printing of the record in this case, and that the following portions of the record shall be incorporated into the transcript of record on appeal.

1. Indictment.
2. Plea.

3. Agreement of Parties waiving trial by Jury.
4. Motion to Suppress Evidence and Quash Indictment.
5. Order of Court overruling Motion to Suppress Evidence and Quash Indictment.
5½. Court records, former convictions.
[fol. 28] 6. Verdict and Judgment.
7. Bill of Exceptions.
8. Assignment of Errors.
9. This Stipulation.
10. Memorandum of the Clerk.
11. Order to Transmit Record.
12. Clerk's Certificate.

Simon E. Sobeloff, United States Attorney. Samuel S. Levin, R. Palmer Ingram, Attorneys for Defendant.

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IN UNITED STATES DISTRICT COURT

MEMORANDUM OF THE CLERK

(1) Petition for Appeal filed 19th February, 1931.
(2) Appeal granted, 19th February, 1930.
(3) Appeal Bond, Dated —— —, ——. Penalty: $300.00. Obligors: John Vance Taylor, Principal, and Isaac J. Bartz and Reba Bartz, Sureties.
(4) Citation, Dated 18 June 1931. (Service acknowledged 29th June 1931.)

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IN UNITED STATES DISTRICT COURT

ORDER TO TRANSMIT RECORD

And, thereupon, it is ordered by the Court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals [fols. 29 & 30] for the Fourth Circuit, and the same is transmitted accordingly.

Teste:

Arthur L. Spamer, Clerk.

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Clerk's certificate to foregoing transcript omitted in printing.

## PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 3209.

John Vance Taylor, Appellant,

*versus*

United States of America, Appellee.

Appeal from the District Court of the United States for the District of Maryland, at Baltimore.

July 11, 1931, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, bond and citation are certified up under Sec. 7 of Rule 14.

Same day, the appearance of R. Palmer Ingram and Helen Elizabeth Brown is entered for the Appellant.

July 17, 1931, the appearance of Simon E. Sobeloff, U. S. Attorney, is entered for the Appellee.

July 24, 1931, the appearance of Samuel S. Levin is entered for the Appellant.

July 25, 1931, twenty-five copies of the printed transcript of record are filed.

### ARGUMENT OF CAUSE.

October 26, 1931 (October term, 1931), cause came on to be heard before Parker, Northcott and Soper, Circuit Judges, and is argued by counsel and submitted.

**OPINION.**

Filed January 12, 1932.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

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No. 3209.

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John Vance Taylor, Appellant,

*versus*

United States of America, Appellee.

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Appeal from the District Court of the United States for the District of Maryland, at Baltimore.

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(Argued October 26, 1931. Decided January 12, 1932.)

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Before PARKER, NORTHCOTT and SOPER, Circuit Judges.

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R. PALMER INGRAM and HELEN ELIZABETH BROWN (SAMUEL S. LEVIN on brief) for Appellant, and SIMON E. SOBELOFF, U. S. Attorney, (JAMES M. HOFFA, Assistant U. S. Attorney, on brief), for Appellee.

NORTHCOTT, Circuit Judge:

Appellant, hereinafter referred to as the defendant, was convicted in the District Court of the United States for the District of Maryland of having possession of intoxicating liquor in violation of the National Prohibition Act. The indictment alleged two former convictions against the defendant.

By agreement, the defendant was tried by the court, sitting as a jury, found guilty as charged in the indictment, and sentenced to be imprisoned three months in jail and to pay a fine of seven hundred and fifty dollars and costs. From this judgment this appeal was brought.

A squad of several prohibition agents, attached to the Baltimore office, in charge of one Ford, Deputy Prohibition Administrator, having had complaints against the property and information to the effect that liquor was being stored there in violation of the laws of the United States, went to a garage located on Curtis Avenue, in the City of Baltimore. On arriving at the premises the officers smelt whiskey in the building which was located in a yard some distance from a house used as a dwelling by the defendant, the garage being on Curtis Avenue and a small alley running along its side. A fence ran from the garage to the house.

After smelling the whiskey the officers testified they looked under and through a crack in the door of the garage and saw a number of cases of cartons, such as, according to the experience of the agents, are used to hold Mason jars, much used for carrying whiskey. The officers then entered the garage by a side door, pulling out a staple that held a hasp, and found in the building, contained in the cartons, seven hundred and thirty-two (732) gallons of whiskey. While the officers were searching the building the defendant appeared and denied that the whiskey was his or that he knew anything about it, but afterwards admitted that it was his. The officers knew that the defendant had been previously convicted of violating the National Prohibition Act.

On the trial objection was made to the evidence of the officers on the ground that their knowledge was acquired by an unlawful search.

This court has frequently discussed the issue raised by this appeal. In *Henderson* v. *The United States,*

12 Fed. (2) 528, in an able opinion Judge Parker held the search unlawful because the officers had entered the building, used in part as a dwelling, without sufficient cause. Again in *De Pater* v. *United States*, 34 Fed. (2) 275, this court held that the officers did not have sufficient cause to enter the building (a dwelling house). But in that case the court said:

"It is too well determined to require argument that knowledge of a crime may be acquired through the sense of smell alone."

In *Benton* v. *United States*, 28 Fed. (2) 695, an outbuilding, included in the fence around the dwelling, was entered by the officers after they saw and heard that which lead them to believe the law was being violated. The circumstances in the Benton case are almost identical with the instant case, and this court held the search was justified and lawful.

In the Benton case will be found a discussion of the authorities. The doctrine laid down in the leading case of *McBride* v. *United States*, 284 Fed. 416, is approved. In the McBride case the court held that it was lawful to arrest a person without warrant, where a crime is being committed in the presence of an officer, that it is lawful to enter a building without a warrant within which such crime is being perpetrated, and that, where an officer is made aware by any of his senses that a crime is being committed, it is being committed in his presence, so as to justify an arrest without a warrant.

Again this court, in the case of *Mulrooney et al.* v. *United States*, 46 Fed. (2) 995, held a similar search to be lawful. The building in the Mulrooney case was used in part as a dwelling. The officers, as here, were led by the sense of smell to look through the transom over the door and saw what they took to be a barroom. They then entered and searched the building. The court said:

"To the knowledge that a crime was being committed, acquired by the sense of smell, was added the knowledge acquired by the sense of sight, when the agent looked through the open transom. The knowledge thus acquired was confirmed after entry of the agents and

before any search by the admission of Mulrooney. No objection was made by Mulrooney to the search of that part of the premises used as a dwelling. The facts and circumstances before the officers were such as to warrant men of prudence and caution in believing that the offense had been committed, and they were justified in their actions."

Here the defendant had the reputation of being a violator of the National Prohibition Law. The officers knew he had been convicted of such a violation. Complaints had been made to them about the garage being used for the storing of whiskey used in such violations. The sense of smell directed them to the building and before entering it what they saw from the outside confirmed their prior knowledge. After entering they found a large quantity of unlawful liquor, the possession of which could only mean one thing—that the law was being violated and in a wholesale way. Such a quantity of whiskey could only be stored in this garage for the purpose of making many sales, each a felony under the law. The garage was not directly connected with the dwelling house.

In *United States* v. *Lorenz*, 17 Fed. (2) 829, the court said:

"A dwelling house affords no sanctuary to crime, no exemption from taxes, no refuge for criminals and their activities, known to be within."

Certainly no sanctity is attached to the garage in this case. The officers were fully justified in what they did and the search was not unreasonable, as contended, within the contemplation of the Fourth and Fifth Amendments to the Constitution of the United States.

An examination of the following cases will support the conclusion reached by us.

*United States* v. *Nobriga et al.*, 19 Fed. (2) 92.
*Kasprowicz* v. *United States*, 20 Fed. (2) 506.
*United States* v. *Berger et al.*, 22 Fed. (2) 867.
*United States* v. *Vottiero*, 25 Fed. (2) 346.

*United States* v. *Backer*, 32 Fed. (2) 936.
*United States* v. *Borkowski*, 268 Fed. 408.
*United States* v. *Lindsly*, 7 Fed. (2) 247.

The cases cited by the attorneys for appellant are either not in point or not controlling on this court.

The question was also raised on behalf of the appellant that the sentence was improper because the record did not properly prove two prior convictions for possession. One of the convictions relied upon by the government was a verdict of guilty under an indictment charging the unlawful possession and manufacturing of intoxicating liquor, where the court sentenced the defendant to five months in jail. It is contended that because the sentence was one that could only have been given for manufacture and could not have been given for possession the verdict did not have the effect of a conviction for possession. There is no merit in this contention.

*United States* v. *Watkinds*, 6 Fed. 152.
*Klein* v. *United States*, 14 Fed. (2) 35.

In any event the sentence in the former case showing a verdict of guilty of possession cannot now be attacked collaterally.

*Anderson* v. *Treat*, 172 U. S. 24.

Also in the indictment the allegation is made of a former conviction for possession and transportation where the defendant pleaded guilty. There is no attack on the sentence in the latter case.

There was no reversible error in the trial, and the judgment of the court below is accordingly

*Affirmed.*

UNITED STATES, APPELLEE.

**JUDGMENT.**

Filed and Entered January 13, 1932.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

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No. 3209.

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John Vance Taylor, Appellant,

*vs.*

United States of America, Appellee.

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Appeal from the District Court of the United States for the District of Maryland.

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This Cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Maryland, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

ELLIOTT NORTHCOTT,
U. S. Circuit Judge.

January 13, 1932.

**ORDER STAYING MANDATE.**

Filed January 14, 1932.

(Style of Court and Title Omitted.)

Upon the Application of John Vance Taylor, Appellant, by R. Palmer Ingram and Samuel S. Levin, his counsel, and for good cause shown,

It Is Ordered that the mandate of this Court in the above case be, and the same is hereby, stayed pending the application of the said Appellant in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, and provided said application is filed in the Clerk's Office of the said Supreme Court within 30 days from this date.

JOHN J. PARKER,
U. S. Circuit Judge.

January 14, 1932.

**CLERK'S CERTIFICATE.**

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remain upon the record and files of the said Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Charlotte, North Carolina, this 27th day of January, A. D., 1932.

(Seal of Court)

CLAUDE M. DEAN,
Clerk U. S. Circuit Court of Appeals,
Fourth Circuit.

[fol. 39] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 28, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is assigned for argument on Monday, April 11th next, after the cases heretofore assigned for that day.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Endorsed on cover: File No. 36,507. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 693. John Vance Taylor, petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed February 11, 1932. File No. 36,507.